IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 305 OF 1997

Ramkrishna Bhiva Patel
R/o Village Rave, Tal Pen,
District Raigad ..Applicant
V/s
1. Bharat Arjul Mokal
2. Vishwas Narayan Patil
3. Hiraman Naga Patil
4. Datta Balaji Patil
5. Madhya Balaji Patil
6. Vishnu Sama Patil
7, Ganesh Namdeo Patil
All residents of Village Rave,
Tal. Pen Dist. Raigad

8. State of Maharashtra ..Respondents.

Mr. Pritam P. Runwal, Advocate for the applicant.
Mr. Y.S. Shinde, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 27TH FEBRUARY, 2007.

ORAL ORDER

. This is a revision application filed by the original complainant against the judgment and order of acquittal of the respondent No.1 to 7 in Sessions Case No.1/1991 under section 147, 148,307 r/w section 149 of Indian Penal Code.

2. Mr. Runwal, learned Counsel for the applicant and Mr. Shinde, learned A.P.P. for the State of

Maharashtra respondent No.8. None appeared for respondents 1 to 7 who are accused.

3. The prosecution case, in brief, is that on 12/5/1990 applicant Ramkrishna Bhiva Patil, who is the complainant, had been to Panvel to meet his brother Pandurang. After the meeting, the complainant Ramkrishna Patil left for his village along with one Ganpat Patil. They reached village Sai by S.T. bus. When they were proceeding by walk towards the village, respondent Nos 1 to 7 and deceased accused No.6 Hari abruptly assaulted the complainant due to some political enemity. Respondent No.3 Hiraman Patil and deceased Bhagwan Gana Mokal were armed with knives, respondent No.8 Ganesh Namdeo Patil was armed with sword and respondent No. 7 Vishnu Patil was having a broken beer bottle. These four persons assaulted him with weapons in their hands . Other persons also beat him. Due to such assault, his one finger was completely amputed and other was fractured and he also suffered several other injuries. On his report Crime No.I-54/1990 came to be registered at Police Station Pen against all the eight accused persons. After investigation charge-sheet was filed against 8 persons. During the pendency of the

trial, accused No.6 Hari died and the case against him was abetted. It appears that one of the assailants, Bhagwan had died in the same incident. During the trial on behalf of the prosecution, in all six witnesses were examined. They included P.W. Ramkrishna, who is a complainant, P.W. 2 Maruti Gana Patil, P.W. 3 Sitaram and P.W. 5 Dr. Ajit Eknath Gavali, who examined Ramkrishan . From the evidence on record it appears that after seeing the incident, one Parshuram rushed to P.W. 2 Maruti Gana Patil and informed him and thereafter, Maruti Patil came to the spot and saw the accused persons assaulting Ramkrishna. Ramkrishan and Maruti supported the prosecution case. P.W. 3 Sitaram Mhatre was examined as a panch witness. However in the cross-examination it was revealed that he was also eye witness of the incident, but his statement as eye witness was not recorded by the police . P.W. 5 Dr. Ajit Gavali proved the injuries including amputation of finger and fracture to another finger. The injuries appears to have been caused by sharp and cutting weapons. The learned trial Court observed that though Ganpat Patil was with Ramkrishna since beginning he was not examined by the prosecution. Similarly, one Parshuram who was the first person, to have seen the

assault, was not examined. After seeing the incident he rushed to P.W. 2 Maruti and informed him. Thereafter Maruti came to the spot. The learned trial Court observed that non- -examination of Ganpat and Parshuram was fatal for the prosecution. Admittedly, there was enemity between two parties and in the same incident Bhagwan Mokal from the party of the accused had died. A counter Sessions case No. 189/1990 was filed. In view of the fact that P.W.2 Maruti was not present since beginning, one person from the side of the accused had died in the same incident and particularly non examination of the two eye witnesses, who were present on the spot since beginning, the learned trial Court refused to place reliance upon the testimony of P.W.1 Ramkrishana and Maruti. In the result, the learned trial court gave benefit of doubt to the accused persons, holding that their evidence is not consistent and cogent to hold accused persons guilt for the offence.

4. The learned Counsel for the applicant concedes that there is nothing on record to show that the prosecution was prevented from examining material witnesses namely Ganpat Patil and Parshuram . In catena

of authorities of Supreme Court, viz;

i. Logendranath Jha and others V.Shri Polai Lal Biswas Biswas, AIR (38) 1951 S.C. 316

ii. K. Chinnaswamy Reddy V. State of Andhra Pradesh AIR 1962 S.C. 1788.

iii. Akalu Ahir and others V. Ramdeo Ram, AIR 1973 S.C. 2145

it is now well settled that the High Court, while exercising its revisional jurisdiction, has to act within certain limits and prescribed norms only to find out legality, propriety, and correctness of the Judgment and order passed by inferior Courts. In view of the provisions of section 401 (3) Cr.P.C. the High Court cannot convert a finding of acquittal into one of conviction in revision application filed by the complainant. If the High Court finds that the prosecution was not given due opportunity to lead evidence or certain material evidence was not considered by the trial Court or that the trial Court had, due to wrong notions of legal position, misdirected itself, the

High Court may set aside the order of conviction and remand the matter back to the trial court for retrial. However, when the prosecution has been given full opportunity and whatever evidence prosecution wanted to be adduced was adduced and it was also considered and appreciated by the trial Court, the High Court cannot reappraise the whole evidence and come to different conclusion nor it can, in such circumstances, remand the matter for retrial which would amount to giving direction to the trial Court to pass a judgment of conviction.

5. In view of the facts and the legal position, this revision must fail. In the result revision application stands dismissed.

(J.H. BHATIA, J.)